



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kate A. Belinski, Esq.
Nossaman, LLP
1666 K Street NW, Suite 500
Washington, DC 20006

MAR 29 2017

RE: MUR 6993
Van Hollen for Senate, *et al.*

Dear Ms. Belinski:

This is in reference to the complaint that you filed on behalf of EMILY's List with the Federal Election Commission ("Commission") on December 14, 2015, concerning Van Hollen for Senate and Stacey Maud in her official capacity as treasurer ("Committee") and Rosalyn Levy Jonas. The Commission found that there was reason to believe that the Committee violated 52 U.S.C. § 30111(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 104.15. The Commission dismissed the allegation that the Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a). On March 23, 2017, a conciliation agreement signed by the Committee was accepted by the Commission. The Commission also found that there was no reason to believe that Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A). Accordingly, the Commission closed the file in this matter on March 23, 2017.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2017). Copies of the Conciliation Agreement and Factual and Legal Analysis for the Committee and the Factual and Legal Analysis for Rosalyn Levy Jonas are enclosed for your information. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Delbert K. Rigsby
Delbert K. Rigsby
Attorney

Enclosures

Conciliation Agreement
Factual and Legal Analysis for the Committee
Factual and Legal Analysis for Rosalyn Levy Jonas

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RECEIVED
FEDERAL ELECTION
COMMISSION
BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

Van Hollen for Senate and
Stacey Maud in her official
capacity as treasurer

2017 FEB 23 PM 2: 50

MUR 6993

OFFICE OF GENERAL
COUNSEL

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn and notarized complaint by EMILY's List. The Federal Election Commission (the "Commission") found reason to believe that Van Hollen for Senate and Stacey Maud in her official capacity as treasurer ("Respondents" or "Committee") violated 52 U.S.C. § 30111(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 104.15.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Committee is the authorized committee of Chris Van Hollen. Stacey Maud is the Committee's treasurer.

2. The Commission did not find that Chris Van Hollen violated the Act or Commission regulations.

3. The Act requires political committees to file reports with the Commission identifying the names and mailing addresses of contributors. 52 U.S.C. § 30104(b)(2)(A) and (b)(3)(A); 11 C.F.R. § 104.8(a). The Act provides that the Commission shall make reports and statements filed with it available to the public for inspection and copying within 48 hours after receipt. 52 U.S.C. § 30111(a)(4). Any information copied from such reports or statements, however, may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of a political committee to solicit contributions from that political committee. *Id.*; *see also* 11 C.F.R. § 104.15(a). Commission regulations provide that the phrase "soliciting contributions" includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(b).

4. On October 23, 2015, EMILY's List, a political committee, produced an email comparing two Democratic candidates for the United States Senate in Maryland, Chris Van Hollen and Donna Edwards, that was sent to a test audience of 5,000 persons. The text of the email referred to Van Hollen as the Democratic primary election opponent of Edwards, but a graph later in the email mislabeled Van Hollen as "(R)" [for Republican] instead of "(D)" [for Democrat].

5. Subsequently, the Committee sent to individuals listed on EMILY's List disclosure reports as contributors a letter from a supporter of the Committee discussing the error that EMILY's List made in the email. The letter also provided information about Van Hollen's Democratic credentials, and asked the reader to "join [] in supporting the candidate in this race

... we want as our next U.S. Senator in Maryland: Chris Van Hollen." The Committee received \$3,350 in contributions from the solicitation.

6. Respondents contend that the purpose of the letter was intended to correct the misidentification of Chris Van Hollen as a Republican in the email, that the letter itself did not expressly ask for contributions, and that a reply envelope, which contained a solicitation form, was included as an incidental part of the mailing. In order to settle this matter, Respondents will not contest the Commission's reason to believe finding.

V. Respondents violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15 by using contributor information from disclosure reports filed with the Commission by a political committee to solicit contributions.

VI. 1. Respondents will pay a civil penalty to the Commission in the amount of Two Thousand One Hundred Dollars (\$2,100), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondents will cease and desist from committing violations of 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15.

3. To remedy the receipt of contributions resulting from the mailing, Respondents will disgorge \$3,350 to the U.S. Treasury.

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

FOR THE COMMISSION:

BY: Kathleen Guith
Kathleen Guith
Associate General Counsel
for Enforcement

3/29/17
Date

FOR THE RESPONDENTS:

Stacey Maud
Stacey Maud
Treasurer, Van Hollen for Senate

2/22/2017
Date

17047471-1-10010

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Van Hollen for Senate and Stacey Maud
in her official capacity as treasurer

MUR 6993

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission. The Complainant, EMILY's List, alleges that Van Hollen for Senate ("Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using information copied from the Complainant's disclosure reports to solicit contributions and by failing to include an appropriate disclaimer on a letter included with the solicitation. The Committee denies the allegations.

As discussed below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15 by using Complainant's contributor information to solicit contributions, and dismisses the allegation that the Committee failed to include a disclaimer on the letter included in the mailing.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

EMILY's List is a non-connected political committee that supports female Democratic candidates who favor the "pro-choice" position on the issue of reproductive rights.¹ The Complainant states that on October 23, 2015, it produced an email comparing two Democratic candidates for the United States Senate in Maryland, Chris Van Hollen and Donna Edwards. The email's text referred to Van Hollen as the Democratic primary election opponent of Edwards, but in a graph later in the email, mislabeled Van Hollen as "(R)" [for Republican]

¹ See <http://www.emilyslist.org/>.

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instead of “(D)” [for Democrat].² Complainant states that it sent this communication to a test audience of approximately 5,000 individuals.³ After being notified of the error within minutes of the email’s transmission, the Complainant says that it immediately corrected the email.⁴ Complainant states that it communicated with Van Hollen for Senate about the error, and offered to send a corrected version of the original email to the 5,000 recipients, but the Committee declined that offer.⁵

EMILY’s List alleges that several days later, some of its donors who appeared on its 2015 monthly disclosure reports notified it that they “received a letter from Rosalyn Levy Jonas accusing [Complainant] of ‘deception’ and engaging in ‘aggressive, misleading tactics’ in connection with the [email] communication.”⁶ In the letter, attached to the Complaint, Jonas identifies herself as a past Board Chair of NARAL Pro Choice America and a reproductive rights activist in Maryland.⁷ The letter discusses the error that EMILY’s List made in the email, provides information about Van Hollen’s Democratic credentials, and urges support for Van Hollen in the Democratic primary election.⁸ Complainant alleges that the letter was accompanied by a solicitation form—also attached to the Complaint—for Van Hollen’s campaign that appeared on the back side of the Committee’s reply envelope.⁹

In support of its allegation that Van Hollen for Senate impermissibly used EMILY’s List’s contributor information to solicit contributions, Complainant alleges that every individual who reported receiving the letter signed by Jonas is a contributor to EMILY’s List and is listed

² Compl. at 1 and Ex. A.

³ Compl. at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*, Ex. B.

⁸ *Id.*

⁹ *Id.* at 3 and Ex. C.

on its disclosure reports, but none are listed as contributors on the Committee's disclosure reports.¹⁰ While acknowledging that the Commission has permitted candidates to use contributor information to correct inaccuracies, Complainant alleges that the letter goes beyond correcting the record because it "praises Van Hollen, bashes his opponent, and inaccurately portrays the EMILY's List email snafu as an intentional act of 'deception,'" and includes a solicitation in the package.¹¹

The Complainant alleges that although the solicitation form on the back of the reply envelope contains a disclaimer, "Paid for by Van Hollen for Senate," the Jonas letter does not contain a required disclaimer.¹²

The Committee denies the Complaint's allegations.¹³ The Committee asserts that in response to the EMILY's List email misidentifying Van Hollen as a Republican, it asked Jonas to write a letter concerning the email confirming the Democratic credentials of Van Hollen.¹⁴ The Committee acknowledges that it mailed the letter and paid for it, as evidenced by the disclaimer on the reply envelope and the appearance of the Committee's address under Jonas's name as the return address on the outer mailing envelope.¹⁵

The Committee asserts that the Complaint provides no facts to support a violation that it used information from Complainant's contributors to solicit contributions because it does not identify the names of Complainant's donors or the number of donors who received the letter.¹⁶ The Committee also asserts that "the context of the letter shows that its purpose was not to raise

¹⁰ *Id.* at 2.

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

¹³ Resp. at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 2.

funds, but rather to respond to the misidentification of Representative Van Hollen's party affiliation and to promote his candidacy."¹⁷ Furthermore, the Committee states that the return envelope was included "incidentally" and the letter "generated approximately \$3,000 in contributions."¹⁸

Additionally, the Committee asserts that it complied with the disclaimer provisions because a disclaimer is not required to be on every piece of a multi-piece mailing.¹⁹ The Committee claims that a disclaimer need not appear on the front or cover page as long as it appears within the communication.²⁰

B. Legal Analysis

Political committees are required to file reports with the Commission identifying the names and mailing addresses of contributors.²¹ The Act provides that the Commission shall make reports and statements filed with it available to the public for inspection and copying within 48 hours after receipt.²² Any information copied from such reports or statements, however, "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes," other than using the name and address of a political committee to solicit contributions from that political committee.²³ "Soliciting contributions" includes soliciting any type of contribution or donation, such as political or charitable contributions.²⁴

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 1-2 n.4.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ 52 U.S.C. § 30104(b)(2)(A) and (b)(3)(A); 11 C.F.R. § 104.8(a).

²² 52 U.S.C. § 30111(a)(4).

²³ *Id.*; *see also* 11 C.F.R. § 104.15(a).

²⁴ 11 C.F.R. § 104.15(b).

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The Commission, however, has permitted the use of a political committee's contributor information to correct inaccurate information disseminated by that committee.²⁵

Here, the Committee's letter was accompanied by a reply envelope, which solicited contributions for Van Hollen's Senatorial campaign. Complainant alleges that this letter was mailed to some of its contributors, but does not identify the number of its contributors who received it. In its response, the Committee does not deny that it used Complainant's contribution list to solicit contributions; rather, it argues that the "context" and "purpose" of the letter was to respond to misinformation rather than raise funds.²⁶ Nevertheless, the letter was accompanied by a solicitation, and the Committee acknowledges receiving \$3,000 in contributions in response to the solicitation. Based on the available information, it appears that the Committee used contributor information from Complainant's disclosure reports to solicit contributions. Therefore, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15.²⁷

The Act and Commission regulations also require a disclaimer on all public communications made by a political committee.²⁸ Public communications include a "mass mailing," which means more than 500 letters of an identical or substantially similar nature within a 30-day period.²⁹ Although the number of letters that Van Hollen for Senate mailed is unknown, the Committee does not assert that it sent fewer than 500.

²⁵ See Advisory Opinion ("AO") 1981-05 (Findley) (Commission permitted a candidate to use information obtained from disclosure reports to mail letters to an opponent's contributors to correct allegedly defamatory statements of the opponent) and AO 1984-02 (Gramm) (Commission permitted a candidate to inform contributors to a committee soliciting contributions on behalf of the candidate without his authorization of the identity of the candidate's authorized committee, but prohibited any solicitation).

²⁶ Resp. at 1-2 n.4.

²⁷ See MUR 6290 (Project Vote) (the Commission found reason to believe that Respondent violated 2 U.S.C. § 438(a)(4) (now 52 U.S.C. § 30111(a)(4)) by using 7,853 contributor names and addresses to solicit contributions that yielded \$4,415 in contributions from the solicitation).

²⁸ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a);

²⁹ 52 U.S.C. § 30101(23); 11 C.F.R. § 100.27.

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The Commission's regulations provide that a communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the required disclaimer.³⁰ In this instance, it appears that if the Committee's letter had been distributed separately, it would have required a disclaimer, as it is a public communication that was distributed by a political committee.³¹ However, under the circumstances of this particular case, including the existence of a compliant disclaimer on the solicitation envelope accompanying the Committee's letter, it appears unlikely that the general public would have been misled as to who was responsible for the letter. Therefore, the Commission exercises its prosecutorial discretion and dismisses the disclaimer allegation.³²

³⁰ 11 C.F.R. § 110.11(c)(2)(v).

³¹ See 11 C.F.R. § 110.11(a)(1), (2).

³² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Rosalyn Levy Jonas

MUR 6993

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission. The Complainant, EMILY's List, alleges that Rosalyn Levy Jonas may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by making an excessive contribution to Van Hollen for Senate (the "Committee") by paying for the letter included with a Committee solicitation. Jonas denies the allegation.

As discussed below, the Commission finds no reason to believe that Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution to the Committee because the Committee confirmed that it paid for the letter, not Jonas.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

EMILY's List is a non-connected political committee that supports female Democratic candidates who favor the "pro-choice" position on the issue of reproductive rights.¹ The Complainant states that on October 23, 2015, it produced an email comparing two Democratic candidates for the United States Senate in Maryland, Chris Van Hollen and Donna Edwards. The email's text referred to Van Hollen as the Democratic primary election opponent of Edwards, but in a graph later in the email, mislabeled Van Hollen as "(R)" [for Republican] instead of "(D)" [for Democrat].² Complainant states that it sent this communication to a test

¹ See <http://www.emilyslist.org/>.

² Compl. at 1 and Ex. A.

audience of approximately 5,000 individuals.³ After being notified of the error within minutes of the email's transmission, the Complainant says that it immediately corrected the email.⁴ Complainant states that it communicated with Van Hollen for Senate about the error, and offered to send a corrected version of the original email to the 5,000 recipients, but the Committee declined that offer.⁵

EMILY's List alleges that several days later, some of its donors who appeared on its 2015 monthly disclosure reports notified it that they "received a letter from Rosalyn Levy Jonas accusing [Complainant] of 'deception' and engaging in 'aggressive, misleading tactics' in connection with the [email] communication."⁶ In the letter, attached to the Complaint, Jonas identifies herself as a past Board Chair of NARAL Pro Choice America and a reproductive rights activist in Maryland.⁷ The letter discusses the error that EMILY's List made in the email, provides information about Van Hollen's Democratic credentials, and urges support for Van Hollen in the Democratic primary election.⁸ Complainant alleges that the letter was accompanied by a solicitation form—also attached to the Complaint—for Van Hollen's campaign that appeared on the back side of the Committee's reply envelope.⁹

³ Compl. at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*, Ex. B.

⁸ *Id.*

⁹ *Id.* at 3 and Ex. C.

The Complaint alleges that if Jonas paid for the letter, then she made an excessive contribution to Van Hollen for Senate because she had already contributed \$2,700 to the Committee.¹⁰

Jonas denies the Complaint's allegations.¹¹ Jonas asserts that in response to the EMILY's List email misidentifying Van Hollen as a Republican, the Committee asked her to write a letter concerning the email confirming the Democratic credentials of Van Hollen.¹² The Committee acknowledges that it mailed the letter and paid for it, as evidenced by the disclaimer on the reply envelope and the appearance of the Committee's address under Jonas's name as the return address on the outer mailing envelope.¹³

B. Legal Analysis

The Act provides limitations on the amount of contributions that persons shall make to any candidate and his authorized political committee with respect to any election for Federal office.¹⁴ For the 2016 election cycle, persons are limited to making a contribution of \$2,700 to a candidate per election for Federal office.¹⁵ If Jonas had paid for the letter, she would have made an excessive contribution to the Committee for the 2016 primary election because she had already made the maximum \$2,700 contribution to the Committee.¹⁶ The Committee, however,

¹⁰ *Id.* at 4 n.4.

¹¹ *Resp.* at 1.

¹² *Id.*

¹³ *Id.* at 1-2.

¹⁴ 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b).

¹⁵ *See* 11 C.F.R. § 110.1(b)(1)(iii).

¹⁶ *See* 52 U.S.C. § 30116(a)(1)(A); Van Hollen for Senate's 2015 April Quarterly Report at 36.

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admits that it paid for the letter.¹⁷ Therefore, the Commission finds no reason to believe that Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A).

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